

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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PATRICIA J. HEINEN,

Plaintiff,

v.

STATE OF WISCONSIN,

Defendant.  
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ORDER

07-cv-631-jcs

Because Judge Shabaz will be convalescing from shoulder surgery for a period of not less than sixty days beginning February 1, 2008, I have assumed administration of the cases previously assigned to him, including this one. A review of the file reveals that on November 5, 2007, pro se plaintiff Patricia J. Heinen filed this lawsuit against the State of Wisconsin, claiming that “on and off” since 1981 when she was committed involuntarily under Wis. Stat. § 51.20, she has been used for human medical research without her consent. She seeks \$50,000 in damages.

On November 9, 2007, the clerk of court mailed plaintiff: 1) a summons form; 2) a copy of her complaint; 3) a letter directing her to serve the summons and complaint on the defendant; and 4) instructions how to serve a complaint on a state government. To date,

plaintiff has not filed proof of service of her complaint on the defendant.

Under Fed. R. Civ. P. 4(m), a plaintiff has 120 days from the time she files her complaint with the court in which to accomplish service. As noted above, plaintiff filed her complaint on November 5, 2007, so the time for serving her complaint expires on March 4, 2008. If plaintiff has accomplished service on the defendant, she must file proof of service with the court immediately. Proof of service is made by submitting the affidavit of the person who served the summons and complaint. Fed. R. Civ. P. 4(l). Ordinarily, the affidavit would include information about the particular date, time and place the person delivered a summons and complaint into the hands of the defendant or someone authorized by law to accept service on behalf of the defendant.

If plaintiff has not yet served a summons and complaint on the defendant, she will have to arrange for service to be accomplished immediately. Her failure to submit proof of service by March 4, 2008, or show cause for her failure to do so, will be understood as a decision to dismiss this case voluntarily pursuant to Fed. R. Civ. P. 41(a)(1). Such a dismissal is a dismissal without prejudice to the plaintiff filing her action again at some future time.

#### ORDER

IT IS ORDERED that no later than March 4, 2008, plaintiff Patricia J. Heinen

submit proof of service of her complaint upon the defendant. If, by March 4, 2008, plaintiff fails to submit the required proof or show cause for her failure to do so, the court will consider that she has chosen to dismiss her case voluntarily under Fed. R. Civ. P. 41(a)(1) and the Clerk of Court is directed to close this file.

Entered this 22d day of February, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge